SUPREME COURT, U. S.
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No. 198

IN THE

SUPREME COURT OF THE UNITED STATES

GULF, COLORADO AND SANTA FE RAILWAY COMPANY, *Petitioner*

vs.

R. B. PITTMAN, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS AT EASTLAND, TEXAS

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Gulf, Colorado and Santa Fe Railway Company, petitioner herein, prays that a writ of certiorari be issued to review the final decree of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland, Texas, which reversed the judgment of the Trial Court of the State of Texas.

I

REPORTS OF THE OPINION OF THE COURTS BELOW

The Trial Court on motion of petitioner entered judgment that respondent take nothing in his suit

against petitioner under the Federal Employers' Liability Act (45 U.S.C.A., Sections 51-59) and the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas reversed this judgment. The opinion of the Court of Civil Appeals is attached hereto as Appendix "A" and is reported in 338 S.W. 2d 774. The order of the Court of Civil Appeals denying the motion for rehearing of petitioner is attached hereto as Appendix "B" and is not reported. The order of the Supreme Court of Texas refusing, no reversible error, the application for writ of error of petitioner is attached hereto as Appendix "C" and is not reported. The order of the Supreme Court of Texas overruling the motion for rehearing of petitioner is attached hereto as Appendix "D" and is not reported.

II

JURISDICTION

1. The final judgment of the Court of Civil Appeals of Texas was entered on September 23, 1960 and is attached hereto as Appendix "E." The order overruling petitioner's motion for rehearing in the Court of Civil Appeals was entered by the Court of Civil Appeals on October 14, 1960.

2. Jurisdiction to review the judgment of the Court of Civil Appeals is conferred on this Court by 28 U.S.C.A. 1257 (3) (June 25, 1948, C. 646, 62 Stat. 929).

3. The statutes of the United States applied by the Court of Civil Appeals of Texas are 45 U.S.C.A., Sec-

tions 51-59 (35 Stat. 65, as amended; 36 Stat. 291 and 53 Stat. 1404).

4. The Court of Civil Appeals is the highest Court of the State of Texas in which a decision could be had within the meaning of 28 U.S.C.A. 1257. Application for writ of error to the Supreme Court of Texas was refused, no reversible error ,on March 15, 1961 and motion for rehearing was overruled by the Supreme Court of Texas on April 12, 1961.

III

QUESTIONS PRESENTED

The error of the Texas Court of Civil Appeals in reversing the judgment of the Trial Court and in holding that there was sufficient evidence of negligence presented by respondent to submit the case to a jury under the Federal Employers' Liability Act.

IV

STATEMENT OF THE CASE

This is a suit for personal injuries filed by respondent, R. B. Pittman, against the petitioner, Gulf, Colorado and Santa Fe Railway Company, in the State District Court at Brownwood, Texas under the Federal Employers' Liability Act. At the conclusion of respondent's evidence the trial judge felt that no evidence of negligence and proximate cause had been presented by respondent and the Trial Court granted the motion for instructed verdict presented by petitioner. On appeal to the Court of Civil Appeals at Eastland, Texas, that Court reversed the judgment of

the Trial Court and remanded the case to the Trial Court for a new trial.

The facts of the accident are simple and the issue before this Court is simple. The respondent at the time of the accident was tightening a small bolt with an ordinary hand box wrench when the wrench slipped off the bolt causing respondent to sit down on the ground and hurt his back. This same bolt had been loosened minutes earlier with the same wrench by Anderson, a fellow employee who testified in this trial for the respondent, and nothing was wrong with the bolt at that time according to Anderson himself. The only testimony as to what caused the accident is that of respondent who testified that the head of the bolt, which had six corners, rounded off causing the wrench to slip. The bolt did not break but a corner or corners simply rounded off so that the wrench slipped around the bolt. There is no testimony that the petitioner knew or should have known that the bolt was going to round off. In fact the testimony of respondent himself (and this will later be quoted) was that the petitioner could not have possibly known that the bolt would round off. If this is so, then there can be no negligence on the part of petitioner because petitioner didn't do anything to cause the accident, and furthermore petitioner could not have done anything to prevent the accident.

Respondent went to trial on his original petition (Tr. 2) in which he alleged only the following grounds of negligence:

"1. In failing to replace the defective nut after

it was removed from the defendant's equipment.

"2. In failing to warn the plaintiff of the defective condition of the nut which he was tightening when injured.

"3. In failing to furnish the plaintiff with a safe place in which to work."

The Trial Court agreed with the petitioner that it was entitled to judgment as a matter of law. The motion for instructed verdict is found at page 12 of the Transcript and sets up, among others, the following as grounds for such instructed verdict:

1. The evidence fails to raise a fact issue as to any of the three alleged grounds of negligence.

2. The evidence fails to raise a fact issue as to proximate cause.

3. The evidence shows as a matter of law that any injuries sustained by respondent were the result of an unavoidable accident.

4. The evidence shows as a matter of law that respondent was guilty of contributory negligence which was the sole proximate cause of the alleged injuries.

The decision of this case must stand or fall on whether the Trial Court was warranted in granting the motion of petitioner based on any ground set out in such motion. In this respect, respondent is bound by the grounds of negligence set out in his petition.

The respondent was an experienced mechanic who had worked for the petitioner as a machinist for